AN EARLY CHAPTER IN CANADIAN RAILROAD POLICY.

In new countries the question of transportation plays an important part, and the conscious policy manifested by the government is worthy of close scrutiny, not only because of its interest as a study in beginnings, but also because of the influence it exerts on later developments. Canada has been no exception to the general rule. In the early days of settlement, at the end of last century and the beginning of this, population shot out in tongue-like formations along the water courses. In the maritime provinces of Nova Scotia and New Brunswick settlement was conditioned almost absolutely by the water courses. The extensive coast line of Nova Scotia, the numerous indentations in its coast, the rivers that find their estuaries in these indentations, all seemed to indicate the importance of the waterway communication. In New Brunswick as late as the middle of the present century population spread along the river courses and the seacoast, and between these points of settlement there existed well-nigh trackless wastes. In the Canadas[1] similar conditions prevailed. The magnificent stretch of water communication from the mouth of the river St. Lawrence, far into the heart of the continent long conditioned the westward movement of population. The traveler down the river St. Lawrence, at the present day, is reminded, when he looks at the continuous villages with their white-walled houses which line its banks, of the day when the river was the only social link, the only commercial way.

It was natural then, that the deficiencies in the existing system of transport should be early appreciated. With expanding population, with increasing trade, the tedious means of transport,

[1] The provinces now known as Ontario and Quebec were then known as Upper and Lower Canada.

the rapid-impeded channels of the rivers became more irksome. The transportation of goods into the interior in the flat-bottomed batteaux then used for this service, was tedious and costly.[1] Freights from Liverpool to Montreal cost on the average $7 per ton; the charge for transporting these goods from Montreal to the upper end of Lake Ontario was from $20 to $27 per ton.[2] In the troublous period of 1812 the English government had an object lesson as to the burden of transportation charges; the transportation of a 24-pound cannon from Montreal to Kingston cost £200 sterling, while the charges on a 74-cwt. anchor amounted to £676.[3]

As early as 1809 attention was turned to the improvement of transportation on the unimpeded stretches of water. In that year steamboat connection between Montreal and Quebec was established.[4] The first lake steamer, the Frontenac, was built in 1816. By 1826 seven vessels, whose construction had cost £39,500 plied on Lake Ontario.[5]

At a still earlier date attention had been turned to canal construction with a view to obviating the disadvantages of the rapids. As early as 1781 shallow canals had been built around the Cedar Cascades and the Coteau rapids.[6] In 1791 a canal

[1] These boats, which were forty feet in length and six feet in width, were manned by a crew of four men and a pilot. By the use of oars, sails, and iron-shod poles for pushing, the journey from Lachine to Kingston, where the lake navigation begins, could be made in from ten to twelve days. TROUT, *Railways of Canada*, p. 24.

[2] MCMULLEN, *History of Canada*, vol. ii. pp. 469–470. The freights down the stream were also expensive. The cost of transportation of a barrel of flour from St. Catharines, near Niagara, to Montreal amounted to one-third of the value.—*Ibid.*, *loc. cit.*

[3] HANSARD, *Debates* (English), 1828, vol. xix. p. 1634. Remarks of Sir G. Murray, on the ordnance estimates. The knowledge which England possessed at the time of the possibilities of a timber-producing country is shown by the fact that she sent out to Canada in 1812 two vessels in frames. The cost of transportation of these from Montreal to Kingston amounted to £30,000 sterling.

[4] The Steamer was named the Accommodation. The first trip was made in November of the year 1809. BRYCE, *Short History of the Canadian People*, p. 308.

[5] TROUT, *Railways of Canada*, p. 23.

[6] *Statistical Year Book of Canada*, chap. xv. § 1220. These canals were six feet in width and two and one-half in depth. They were intended to permit of the passage of a batteau loaded with thirty barrels of flour.

had been built at Sault Ste. Marie.[1] In the period 1818 to 1835 a series of canals, the Welland, the Grenville, the Rideau and the Lachine, were constructed.[2]

The deficiencies in the existing methods of transportation which have been indicated, and the appreciation of the advantages consequent upon the adoption of steam railroad transportation in the old world had early turned the attention of the new world to this matter.[3] In Canada it was felt that the adoption of such a system was absolutely necessary if quick settlement was to be facilitated. Owing to the lack of an efficient means of communication acre on acre of fertile soil, mile after mile of rich woodland was virtually withheld from settlement. The railroad project presented itself to the pioneer not as a sordid matter of commerce alone but as an essential factor in national life and development.

At an early date the advantages of an interprovincial connection were placed before the public. In 1827 a project for a railroad connecting St. Andrews, on the Bay of Fundy, near the Maine boundary, with the city of Quebec was mooted, and the matter was discussed in public meeting at St. Andrews in 1828.[4] The project was dormant until 1832 when it again came to the front.[5] Stress was laid on the commercial advantages, since

[1] *Statistical Year Book of Canada, loc. cit.* This canal had one lock. It was intended to facilitate the trade of the Hudson Bay Company.

[2] The Welland canal, connecting Lake Erie with Lake Ontario, was primarily a commercial undertaking. The Lachine canal, the Rideau, the Grenville, in the construction of all of which the English government co-operated, were primarily of strategic importance. The reason given for a mean depth of five feet in the case of the Rideau canal was that the canal was to be used chiefly for military purposes and that this would be sufficient for the transfer of all descriptions of military and naval stores. See HANSARD, 1828. vol. xix. p. 1634. Canadian *Statistical Year Book*, chap. xv, § 1220. BRYCE, *Short History of Canadian People*, p. 423. MCMULLEN, *History of Canada*, vol. i. pp. 469–470.

[3] The Baltimore and Ohio Railroad was chartered in 1827, *Laws of Maryland.* "An act passed to incorporate the Baltimore and Ohio Railroad Company," passed February 28, 1827. Railroads were chartered in quick succession in North Carolina, New York, Massachusetts, and New Jersey.—HADLEY, *Railroad Transportation*, pp. 32–34.

[4] *Statistical Year Book of Canada*, chap. vii, § 329.

[5] SANDFORD FLEMING, *The Intercolonial*, p. 6.

such a railroad would afford a means whereby the timber, the provisions, ashes and other exports of the interior provinces might be disposed of much more expeditiously than if sent by the river St. Lawrence, there being at the same time the advantage of having a winter port.[1]

In 1830 the discussion of the advantages of railroad construction began in Lower Canada. The real importance of the railroad was not, however, appreciated, for it was considered that it would act simply as supplementary to the canal system. It was suggested that wooden railroads on which the cars should be drawn by horses would be of value for transportation purposes in the spring and fall.[2] The papers commented on the "unparalleled speed" of the Stockton and Darlington Railroad which had conveyed six or seven hundred passengers "at the rates of ten, twelve and sixteen miles per hour."[3] The most tangible proposition made in this connection was that a railway connecting Lake Champlain with the St. Lawrence should be constructed.[4]

The Champlain and St. Lawrence proposition, which was intended to afford a shorter means of communication by a mixed rail and water route between Montreal and New York than was afforded by the water route via the St. Lawrence and the Richelieu rivers,[5] took hold of popular approval. A company of

[1] FLEMING, *loc. cit.;* details as to the trade of the provinces at an early date will be found in ANDERSON, *Importance of British America*, pp. 306 and 311.

[2] Montreal *Gazette*, January 6, 1830. Letter written by MR. J. GEORGE. It was assumed at the time that transportation must of necessity be intermitted in the winter season.

[3] *Ibid., loc. cit.*

[4] Montreal *Gazette*, January 18, 1830. At this time a wooden railroad had been in use for some years along the banks of the Lachine Canal. A curious suggestion appears in the Quebec *Mercury*, quoted in the Montreal *Gazette* of this date, to the effect that the delays consequent upon the heavy snows of winter might be avoided by having the railroad elevated two feet above the ground and built as far as practicable in the direction of the prevailing winter winds. Upper Canada at this time was interested in the improvement of its highways; £20,000 was granted for this purpose in 1831 by the legislature.—*Statutes of Upper Canada*, 1831, chap. xvii.

[5] The proposed line would form the base of a triangle. By the existing route it was necessary to travel along the two sides of the triangle.

seventy-four persons[1] with a capital of £50,000 known as "The Company of the Proprietors of the Champlain and St. Lawrence Railroad" was incorporated in 1832.[2] The powers granted the company, the provisions contained in the charter, the discussion which took place on the act, all merit attention; for this was the first railroad charter granted in the Canadas, and it remained for a number of years, the model upon which the railroad charters granted in Lower Canada were based.

In the course of the discussion the policy of government ownership was advocated by some members of the legislature. Papineau, the leader of the radical French section, took an uncompromising stand in favor of private ownership on the ground that government control left the way open for jobbery.[3] The attitude towards railroad enterprise shown in the act was based on the assumption that it would not be necessary for the government to intervene in any way to aid the railroad. This attitude was manifest for some time in the railroad legislation of the Canadas.

When disputes arose with reference to the price to be paid for the land it was found necessary to take for the purposes of the railroad, recourse was to be had to a special jury empaneled by the sheriff of the district, where the land in dispute was located, on the direction of the court of King's Bench; the award of this jury was to be final.[4] Those obstructing the free use of the railroad were to be subject to a penalty of not less than £5 nor

[1] Nine of these bore French names.

[2] *Statutes of Lower Canada*, 1832, chap. ii.

[3] Montreal *Gazette*, January 21, 1832. In the absence of official copies of the debates — these were not then provided for — it is necessary during the earlier period to have recourse to the newspaper files of the time. It is somewhat interesting to note that in Canada as in other countries an opposition to the railroad project on pseudo-humanitarian grounds was manifested. It was held that it would be prejudicial to the interests of the ''poor carters."—*Ibid.*, *loc. cit.*

[4] Section 12 of the act of incorporation. Compare with the foregoing provision the following from the charter of the Baltimore and Ohio Railroad: "If they cannot agree . . . . application may be made to any justice of the peace of such county who shall thereupon issue his warrant . . . . to the sheriff of said county requiring him to summon a jury . . . . to decide the matter."

more than £10.[1] The occasional nature of the travel on the highways of the time shows forth in the provision that gates were to be provided at crossings, which were to be kept *closed*[2] *except when wagons, carriages, etc., desired to cross*.[3] In order to be eligible for the office of president, treasurer, clerk, or member of the committee of the railroad, British citizenship, either by birth or naturalization, was a primary requisite.[4] The railroad was to be completed within three years from the date of incorporation.[5] The company was required to submit annually within the first fifteen days after the opening of each session of Provincial Parliament a detailed account with a statement of the amount of tonnage and the number of passengers carried during the year.[6]

The most important provisions, however, are those which deal with the question of tolls and the right of purchase by the state. A careful consideration of these provisions indicates that in the drafting of the act English and American precedents had been held carefully in mind.

The charter fixed the maximum rates as follows: 12s. 6d. per ton for freights, while a maximum charge of 4s. was fixed in the case of passengers. These rates were to be charged for the total distance from St. John's to the river St. Lawrence, and for shorter distances pro rata.[7] The railroad being sixteen miles in length, this provision established maxima which, estimated on a mileage basis, amounted to 9s. 3d. and 3d. respectively.[8] An interesting provision for what may be classed as a

[1] *Statutes of Lower Canada*, § 18. [2] The italics are mine.

[3] *Ibid.*, § 6. This provision was to be enforced under penalty of fifty shillings for every offense.

[4] *Ibid.*, § 24. [5] *Ibid.*, § 47. [6] *Ibid.*, § 49.

[7] Sections 34, N. When those interested in the construction of the proposed railroad had announced their intention of applying for incorporation, they at the same time stated their intention of charging five shillings for passengers and fifteen shillings per ton for freight.—Montreal *Gazette*, May 1, 1832. As appears in the text, these proposed rates were subjected to revision in granting the charter.

[8] It must be borne in mind that these figures were in currency. £8 4s. 6d. sterling were equal to £10 currency. Applying this ratio, the rates would be reduced to 7s. 5d. sterling and 2.4d. sterling, respectively.

semi-automatic regulation of rates through the instrumentality of the dividend is contained. A maximum rate of dividend of 12 per cent. was permitted; whenever the dividend exceeded this figure, the company was to reduce the maximum rates by 25 per cent. "for each and every ten shillings per share which they shall divide over . . . . said dividend of 12 per cent." When the dividend was below 12 per cent. the maxima might be charged.[1]

The extent to which the new legislation was influenced by the precedents afforded by English and by American experience will readily appear as a result of an outline study of the provisions contained in contemporary legislation on the subject of rates.[2] The similarity of interests in the case of Canada and of the United States, economic interests which differ in degree, not in essence, would naturally lead one to assume that in railroad legislation as well as in railroad development Canada would be influenced in great degree by the contemporaneous movements in the United States. A careful investigation of the conditions, both in earlier and in later times, shows that the assumption is justified by fact, and indicates the wisdom of a comparative study.[3]

A diversity of practice as to the treatment of the rate question existed in the early days of railroad legislation in the United States.[4] The earlier acts incorporating railroads provided for maxima only, no provision for regulation of rates being

[1] § 36.

[2] That recourse to these precedents was had is evident from the statement of Mr. Leslie, a member of the assembly committee on the bill.—Montreal *Gazette*, January 23, 1832.

[3] In the course of a forthcoming study of "The Railway Policy of Canada," some of the material of which is contained in this paper, I have occasion to show how, in many ways, the Canadian railroad problem has been integrated with that of the United States.

[4] This diversity of practice is especially manifest in the case of the legislation passed by the state of New York. At one time ton-mile rates were provided for (charter of Ithaca and Owego Railroad; *Laws of New York*, 1828, chap. xxi., § 11). At another discretionary power as to the determination of rates was reposed in the hands of the directors (act empowering Orange and Sussex Canal Company to construct a railroad; *Laws of New York*, 1828, chap. clxix., § 5).

contained.[1] A modification of this policy soon presented itself; and the legislatures now concerned themselves with prescribing regulations of rates. An act of Maryland, passed in 1828, provided that at the expiration of twenty years from the passing of the charter the legislature might legislate on the subject of the rates.[2] The legislation of Massachusetts marks a further advance in this matter, for in 1830 provision was made for a quadrennial revision of the rates by the legislature, provided that the dividend exceeded 10 per cent.[3] A further modification in favor of the railroad is seen in a later provision that the revision shall be decennial, and the express prohibition on the legislature so reducing the rates as to produce less than a 10 per cent. dividend.[4] In so far as any action on the matter is taken in the legislation of New York it is in the direction of prohibiting the imposition of rates which will produce more than 12 per cent.[5] or 14 per cent.[6] No method for revision by the legislature is specified.

Two provisions which bear still more directly on the provision contained in the charter of the Champlain and St. Lawrence

[1] *E. g., Laws of New York*, 1828, chap. ccxxxviii., § 11 (charter of Great Ausable Railroad); *Massachusetts Public Acts*, chap. xxvi, § 6, approved June 12, 1829 (charter of Worcester Railroad); *Acts of New Jersey*, 1831, act passed January 21, § 10 (charter of Patterson and Hudson River Railroad Company); *Laws of North Carolina*, 1832–3, chap. xxv. p. 27 (charter of Portsmouth and Roanoke Railroad); *Laws of Maryland*, chap. lxxii. § 20, act passed February 13, 1828 (charter of Baltimore and Susquehannah Railroad). *Ibid.*, act passed February 28, 1827 (charter of Baltimore and Ohio Railroad). It is worthy of notice that, while the idea does not appear in the charter of the Champlain and St. Lawrence that the railroad occupies a position, in point of free competition, analogous to that of a canal, it does, however, in the case of the two acts last quoted.

[2] *Laws of Maryland*, chap. clxxxvii. act passed March 14, 1828 (charter of the Elkton and Wilmington Railroad). It was provided that the rates should not be so reduced as to reduce the dividend below 6 per cent.

[3] *Laws of Massachusetts*, 1830, chap. xciii. § 10 (charter of the Franklin Railroad).

[4] *Laws of Massachusetts*, 1831, chap. lvii. § 5.

[5] *E. g., Laws of New York*, 1828, chap. ccciv. § 17 (act incorporating Hudson and Berkshire Railroad); see also *Laws* of same year, chap. cclxxvi. § 11 (charter of Salma and Port Watson Railroad).

[6] *E. g., Laws of New York*, 1828, chap. cccxl. § 11 (charter of the Geneva and Canandaigua Railroad).

Railroad with reference to the quasi-automatic regulation of rates have yet to be mentioned. The charter of the Baltimore and Washington Railroad provided that when the net annual profits exceeded 10 per cent. on the cost of construction, the excess was to be paid over to the state treasurer, and the president and directors were at the same time to be required to so reduce the rates as to bring the annual profits down to 10 per cent.[1] The provision contained in the charter of the Liverpool and Manchester Railway[2] is one which is almost identical in terms with that contained in the charter of the Champlain and St. Lawrence, although in one respect, namely, the provision for raising the rates, more care for the railroad is manifested. Defined way tolls were provided for; when the dividend in the preceding year fell below 10 per cent. the rates might be raised, and when the dividend exceeded 10 per cent. the rates were to be lowered by one-twentieth.[3]

The feeling at the time both in England[4] and America[5] was that legislative regulation of the dividend was necessary in order to protect public interests. We who are accustomed to "stock-watering" and other devices for eluding such provisions are apt to belittle the power of legislative regulation in this respect. But it must be remembered that the efficiency of such regulations had so far been but little tried; and it was natural that Canada should adopt those measures which the experience of other nations seemed to justify.

[1] *Laws of Maryland*, chap. cxxxix. § 15, act passed February 25, 1829. It was provided in § 17 of this act that, if at the end of two years after the completion of the road it appeared that the tolls authorized in the act did not give a dividend of 6 per cent. on the whole capital stock, they might be so increased by the president and directors as to bring them up to 6 per cent., but they must not be increased by more than 50 per cent.

[2] 7 GEORGE IV. chap. xlix.

[3] COHN, *Untersuchungen über Englische Eisenbahnpolitik*, vol. i. p. 35.

[4] In addition to the provisions contained in the foregoing act, it is of interest to notice that the "Regulation of Railways Act," 1844, 7 and 8, Victoria, chap. lxxxv, provides that the treasury shall have power to regulate "tolls, fares, and charges when the dividends paid are greater than 10 per cent."

[5] LARDNER, *Railway Economy in Europe and America*, p. 347.

Another important clause in the charter of the first railroad of Canada may be denominated the "state purchase" clause. And here again the provisions contained in railroad charters in the United States are in point. The earliest railroad charter granted by an American commonwealth which contained a "state purchase" clause was granted by the state of New York in 1828.[1] The legislature was given the option within a period of fifteen years after the completion of the railroad of purchasing it by the payment of the cost of the road plus 14 per cent.[2] thereon. New Jersey adopted the policy of declaring the right of the state to assume ownership of the road after fifty years from the completion of the road on the payment of the cost of construction and equipment.[3] The most consistent policy in this respect is to be found in the case of Massachusetts. At first it was stated that the state might purchase the road any time after ten years from its completion on payment of the cost of construction plus 10 per cent.[4] Later a term of twenty years was substituted for the term of ten years, and the word "cost" was more accurately defined by stating that this was also to cover the cost of keeping the road in repair.[5]

The provision for state assumption of railroads on the termination of a defined period and on definite conditions was distinctly American in its origin. Some of those interested in railroad policy in England declared that English practice had granted charters of too long duration and that the American system was preferable.[6]

[1] *Laws of New York*, 1828, chap. xxii. "An act to amend an act to incorporate the Mohawk and Hudson Railroad Company."

[2] *Ibid.*, § 3.

[3] *Acts of New Jersey*. Act passed January 21, 1831, § 17, an act to incorporate the Paterson and Hudson River Railroad.

[4] *Massachusetts Public Acts*, 1830, chap. xciii. § 14 (charter of the Franklin Railroad). *Revised Statutes of Massachusetts*, 1836, chap. xxxix. § 84 makes this provision applicable to all railroad charters granted.

[5] *Massachusetts Public Acts*, 1831, chap. lv, (charter of Boston and Taunton Railroad).

[6] HANSARD, *Debates* (English), vol. xxxiii. pp. 977–988. Speech delivered by Hon. Mr. Morrison, M. P. for Inverness, May 17, 1836.

To turn now to the purchase clause of the Canadian road[1] it will be found that still more stringent conditions are laid upon the stockholder. The government is empowered at *any time* to take over the work and its appurtenances upon paying the full amount of the paid up shares together with such further sum as shall amount to 20 per cent. upon this. The payment was to be made in annual installments of 20 per cent. In consideration of the fact apparently, that the purchase price of the railroad was not to be paid down in a lump sum the company was to be allowed 6 per cent. interest on the bonus sum of 20 per cent.

In the Canadian act there was not granted, as in the American acts, a period during which the railroad was immune from the application of the purchase clause. The government in inserting such a clause, in so far as it was following a conscious policy, would appear to have had in mind the assumption of the road as a commercial enterprise in case it should prove advantageous. The high rate of the minimum dividend allowed the company, a dividend which was exempt from revision, is still further evidence of the estimate of the importance of the railroad as a paying investment.

Although the charter had provided that the road should be completed within three years from the date of incorporation,[2] it was not until 1835 that building operations were commenced; the Champlain and St. Lawrence was opened for traffic in 1836.[3] The gauge was five feet six inches.[4] In order to obtain cheap construction, wooden rails[5] on top of which flat bars of iron were

[1] § 48 of the incorporating act.

[2] § 47 of Charter.

[3] *Montreal in 1856*, Sketch prepared for celebration of Grand Trunk Railway, etc., p. 31. The subscription books of the railroad had been opened on May 1, 1832, at Montreal in the Exchange Coffee House.—Montreal *Gazette*, May 2, 1832.

[4] *Statistical Year Book of Canada*, chap. vii, § 332. The choice of this gauge by the Champlain and St. Lawrence played a prominent part in the later controversies on the gauge question.

[5] TROUT, *Railways of Canada*, p. 33. The use of such rails was quite common in the United States at the time. See in this connection Dr. LARDNER, *Railway Economy in Europe and America*, p. 335. . . . . In South Carolina a line equipped with

spiked were used. The first train was drawn by horses; steam locomotives were placed on the line in 1837.[1]

From an early date the project of an intercolonial railroad had been agitated in Canada; the Quebec and St. Andrews project was the form in which this proposition first manifested itself. The varying fortunes of this project deserve separate consideration;[2] the earlier story of the projected road may, however, be passed in review. In 1835 the project was revived, a survey as far as the height of land was undertaken by New Brunswick, delegations were sent to Canada and Nova Scotia, and an attempt was made to enlist the aid of the English government on the ground that the work was imperial in its nature.[3] The Imperial government granted £10,000 towards the expense of a systematic survey.[4]

The next step was the granting of a charter in 1836 by the New Brunswick legislature incorporating the "Saint Andrews and Quebec Railroad Company."[5] The policy indicated in this act is distinctly more *laissez faire* than that of the Champlain and St. Lawrence charter. The capital was fixed at not less than

wooden rails was constructed between Charleston and Augusta, a distance of 136 miles, in the period 1830–1833. Some of the wooden rails in use in the United States were of the nature described in the text; others were of wood alone. See *Reports relating to the project of constructing a railway . . . . from Halifax to Quebec.* Appendix, p. 60; Fredericton, 1847. Specimens of this method of track construction may be seen in the transportation section of the Field Columbian Museum, Chicago.

[1] The first train was composed of four cars.—*Statistical Year Book, Canada,* chap. vii. § 332.

[2] The story of the proposed intercolonial road is a long and vexed history of negotiations and counter negotiations rendered futile at times by provincial disagreements, at others by a somewhat shifting policy on the part of the English government. The maritime provinces, in 1867, made the construction of such a road a *sine qua non* of their entering the confederation, and it was under the stress of political exigency that the road was finally constructed.

[3] The project was revived at a meeting held at St. Andrews, October 5, 1835. A deputation was sent to Lower Canada in December of the same year. It was estimated that the road would cost four million dollars.—FLEMING, *The Intercolonial,* pp. 7–12.

[4] FLEMING, *loc. cit.* The Imperial government also stated its readiness to take into consideration the question of further aid after the survey was completed. "The Colonization of British America," by J. M. LAWS, p. 22.

[5] *Laws of New Brunswick,* 1836, chap. xxxi.

£750,000,[1] the company was allowed to charge such tolls as it considered reasonable. There is one limitation on this power. Ten years after the completion of the road the legislature shall reduce the tolls, if they are declared excessive, so that they shall not produce a *greater rate of net profit than 25 per cent.*[2] No mention is made of a reserved right of state purchase.

The maritime provinces manifested a keener interest than the Canadas in the success of this project. There was an evident desire on their part to obtain a share in the transport trade of the products of the inland provinces.[3] The Champlain and St. Lawrence Railway was an evidence of the fact that even at this early date the Canadas were looking to closer trade relations with the United States.

The project, however, was fated to failure at this time. The racial discontent existing in Lower Canada at the time, soon to break out in open revolt, permitted but scant welcome for a scheme so ostensibly imperial in its nature. The disputes existing as to the boundary between Maine and New Brunswick also co-operated to give this project a set back,[4] and at times these disputes took on such an embittered tone that they threatened to embroil the United States and England in war. It had been intended to follow a direct route from St. Andrews to Quebec; and a survey was undertaken in 1836.[5] The projected line, however, fell within the disputed territory, and exception to this was taken by the United States.[6] Under these conditions noth-

[1] *Laws of New Brunswick*, § 2.

[2] *Ibid.*, § 19. The italics are my own. The provision throws an interesting light on the profits deemed legitimate. It was estimated at the time that the road would have an annual income of $606,000. The confusion of sterling and decimal currency, which appears here, appears in the original.

[3] As early as 1830 a motion had been introduced in the Nova Scotia legislature to appoint a committee to ascertain the best means of establishing steamboat connection between Halifax and Quebec.

[4] The disputes arose under art. ii of the treaty of 1783, art. v of the Jay treaty, and arts. iv. and v. of the treaty of 1814.

[5] Under Captain Yule acting under imperial instructions, the survey was begun on the 24th of July 1836.

[6] In 1837. See *Messages and Papers of the Presidents*, edited by RICHARDSON, vol. iii. pp. 367–369.

ing could be done until the difficulty was settled. The Ashburton treaty found that seven-twelfths of the disputed territory belonged to the United States.[1] The later history of the road connects itself with the subsequent agitation in favor of an intercolonial railway.

The charters granted by Upper Canada had in mind the dual object of opening up the country back from the lakes and obtaining connections with the western portions of the province. The first railroad movement began in 1834, when the Cobourg railroad was chartered;[2] in rapid succession came charters to the London and Gore,[3] the Port Dover and Hamilton,[4] the Erie and Ontario,[5] the Burlington and Lake Huron,[6] the Niagara and Detroit,[7] the Toronto and Lake Huron,[8] and the London and Gore.[9] The disturbances caused by the rebellion of 1837 caused a cessation in the activity of railroad projection.[10]

A scrutiny of the railroad legislation of Upper Canada shows some resemblances to, some difference from, that of Lower Canada. The railroad corporation was given power to fix and regulate the tolls.[11] It was assumed that there would be the same freedom of competition on the railroad as on a canal, each

[1] FLEMING in his *History of the Intercolonial*, pp. 14–15, alleges that the United States laid claim to this territory fearing the imperial advantages which would result from the construction of the proposed railway. It is of interest to note that the strategic importance of such connection was early appreciated, because shortly subsequent to the war of 1812 a military wagon road through the territory was projected by the British Government.

[2] Upper Canada, 4 Wm. IV. chap. xxviii.

[3] *Ibid.*, chap. xxix. This road is later known as the Great Western. It now forms an integral part of the Grand Trunk system in the western peninsula of Ontario.

[4] *Ibid.*, 5 Wm. IV. chap xvii.

[5] *Ibid.*, chap. xix.

[6] *Ibid.*, 6 Wm. IV. chap. vii.

[7] *Ibid.*, chap. vi.

[8] *Ibid.*, chap. v.

[9] *Ibid.*, chap. lii.

[10] In Lower Canada, during the Constitutional interregnum consequent upon the rebellion of 1837, two railroads, the Montreal and Province line, and the Carillon and Grenville — the latter a short line, intended to circumvent the Sault Rapids of the Ottawa River — were chartered by special ordinance.—*Lower Canada Ordinances of the Special Council*, 1840, chaps. xli and xlvi.

[11] § 6, *Charter of the Cobourg Railroad.* A similar discretionary power is found in the case of other companies, *e. g.*, the charter of a company to construct a highway. 6 Wm. iv. chap. v.

individual supplying, if so desired, his own locomotive and means of transportation and paying rates agreed upon for the use of the road.[1] It is to be noticed that throughout this period the policy of Lower Canada was in harmony with the practice, established in the charter of the Champlain and St. Lawrence, of fixing maxima.[2]

A provision for "state purchase," differing essentially from that contained in the Lower Canadian legislation is to be found in the charters of Upper Canada. On the termination of a period after the completion of the road, sometimes fifty years,[3] sometimes forty years,[4] the government may assume the ownership of the railroad on the payment of the full amount paid up plus an additional payment thereon, in some cases of 25 per cent.,[5] in others of 20 per cent.,[6] but this is exercised subject to the provision that the shareholders shall have received on an average 12½ per cent. annually on their investment.[7] This represented a general policy of the government since provisions identical in terms are to be found in the case of the Richmond Canal Company,[8] and the Port Dover Harbor Company.[9] The seemingly more favorable position of the railroad as regards the interposition of the legislature which was given in the legislation of Upper Canada is, however, limited by the provision

[1] See act incorporating Niagara and Detroit River Railroad, *supra*. This contained a provision that other persons were not to be permitted to make use of the railroad without the consent and permission of the proprietors. This evidently recognized an assumed condition of free use consequent upon the payment of tolls for the use of the road. The influence of English policy in this respect may be seen.—COHN, *Untersuchungen*, etc., vol. i. p. 77.

[2] In the case of the Montreal and Province line the rates are 10d. per ton per mile for freight and 3d. per mile for passengers. On the Grenville and Carillon — a short line some twelve miles long — the maxima were 9s. per ton for freight, and 2s. for passengers, shorter distances to be charged pro rata.

[3] *Charter of the Cobourg Railroad*, § 21. See also *Charter of Burlington and Lake Huron Railroad.*

[4] *Charter of London and Gore Railroad*, § 22.

[5] *E. g., Charter of Cobourg Railroad.*

[6] *E. g., Charters of Port Dover and Hamilton*, and *Burlington and Lake Huron Railroads.*

[7] *E. g., Charter of the Cobourg Railroad*, § 21.

[8] 4 Wm. IV. chap. xxi, 1834.

[9] 7 Wm. IV. chap. xiv.

reserved by the legislature to modify charters as they saw fit,[1] and also by the requirement that the company should submit an annual statement of the amount of profits earned.[2]

One significant difference in the railroad legislation of the two provinces is contained in the provision with reference to the prohibition of the assumption of banking functions which appears in the legislation of Upper Canada but is absent in that of Lower Canada.[3] This clause results from the special conditions of Upper Canada. A similar clause is to be found in one of the American railroad charters,[4] that of the Paterson and Hudson River Railroad.

The speculative conditions existing in Upper Canada at the time and the desire for unlimited banking facilities rendered it necessary to insert this clause.[5] A similar prohibition is found in the charters of various joint-stock companies incorporated to construct harbors and canals. Practically no restriction on the issue of bank notes existed up to 1837, and in the absence of express prohibitions joint-stock companies might issue bank notes without danger of prosecution.[6] The more radical section of the reform party, then in opposition, favored a system of free banking, and the doing away with restrictions on note issue.[7] The desire of joint-stock corporations, and especially of the railroad corporations, to take advantage of the chances for gain that might be exercised as a result of *implied* powers was very

[1] See *Charters of the Cobourg Railroad*, and of the *London and Gore Railroad*.

[2] *Charter of the Cobourg Railroad*, § 22.

[3] *Charter of London and Gore Railroad*, § 17, "Nothing herein contained shall authorize the company to carry on the business of banking."

[4] *Charter of the Paterson and Hudson*, *Laws of New Jersey* (passed January 21, 1831), clause 16, ... "And be it enacted that no part of the capital stock or moneys of the company incorporated by this act shall be used or employed by said company for banking purposes under the penalty of forfeiting this charter."

[5] The view of the case here indicated is substantiated by Professor Shortt of the Department of Political Economy, Queen's University, Kingston, who has recently published a monograph on the *Earlier History of Canadian Banking*. For this additional light I am indebted to a personal letter from Professor Shortt.

[6] Notes to a considerable extent were issued by joint-stock corporations formed for other purposes.—BRECKENRIDGE, *The Canadian Banking System*, p. 58.

[7] *Ibid.*, p. 57.

manifest. While the charter of the London and Gore Railroad was under discussion, a petition signed by over three hundred stockholders was presented to the legislature asking for banking powers.[1] The radical majority in the lower house incorporated the required provision in the bill, but the upper house, in touch with the more cautious policy of England, blocked this and all similar attempts. Although the matter was set at rest by the legislation in the year 1837,[2] which required express legal enactment before banking powers could be exercised, yet we find the prohibitory clause lingering on until 1846.[3]

From the year 1825 onward a large emigration from the British Isles had set in, a great part of which was attracted by Upper Canada. This immigration was most marked in the period 1829 to 1836. In 1831, 34,000 immigrants landed at Quebec; in 1832, 52,000; in the four years 1829 to 1833, 160,000 immigrants had taken up their homes in Canada.[4] The lavishness of chartering in Upper Canada[5] as contrasted with the more conservative policy shown by Lower Canada is attributable to the fact that while the former was desirous of a policy of rapid settlement and development of the country, the latter had its attention concentrated on the more proximate advantage of commerce.

The rebellion of 1837 caused the immigration to fall off at once.[6] The difficulties of the time were further aggravated by the crisis of 1837, which, beginning in the United States, extended to Canada at a time when the people were suffering from the poor harvests of 1835 and 1836. The immediate effect

[1] Upper Canada *Journals of the House*, 1834, March 24.

[2] 7 Wm. iv. 1837, chap. xiii.

[3] *E. g.*, *Canada*, *acts of 1846*, chap. lxxx, "An act to revive and amend the act of Upper Canada incorporating the Cobourg Railroad Company."

[4] BRYCE, *Short History of the Canadian People*, pp. 334–335.

[5] In its desire to open up the rich fertile country between Lake Ontario and Lake Huron, the government of Upper Canada issued charters to no less than three railroads, which would parallel each other in this section. In this period the authorized stock of the companies chartered by Upper Canada was £1,775,000, while that of those chartered by Lower Canada was £250,000.

[6] In 1838 only 5000 immigrants landed in Canada.—*Lord Durham's Report*, p. 21.

of this was seen in connection with the various railroad enterprises which were being floated at the time. The earlier attitude manifested towards railroad enterprise had been that they would be sufficiently profitable to attract capital without any active intervention of governmental aid. The stress of the time and the desire for rapid development of the country rendered it necessary for the government to make some change in its policy.

As early as 1832 it had been found necessary to extend aid to various joint-stock companies that had been chartered to carry on improvement works; and in this year government aid to the extent of £10,000 was granted.[1] The Cobourg Railroad had not been able to begin construction work by 1836, and the time for commencing was extended three years.[2] The conditions existing necessitated the extension of at least temporary aid to railroad enterprise; but the adoption of such an attitude was rather a matter of temporary expediency than of permanent policy. In 1837 the Cobourg Railroad was granted £20,000, which was to be paid over when £15,000 of stock was subscribed and one-third of this paid up.[3] The net receipts of the road were pledged for the payment of principal and interest; and in addition such payment was to be secured by a bond; in case of default the government was authorized to take possession of the road.[4] The Erie and Ontario was granted a loan of £5000, the directors being required to make provision for the payment of interest one year in advance.[5] The government undertook to aid

[1] The Cobourg Harbor Company received £2000 (*Statutes of Upper Canada*, 1832, chap. xxii), the Desjardins Canal Company £5000 (*Ibid.*, chap. xxiv), the Port Hope Harbor and Wharf Co., £2000 (*Ibid.*, chap. xxiii); the Tay Navigation Company, £1000 (*Ibid.*, chap. lxii).

[2] *Statutes of 1836, Upper Canada*, chap. xix. The Erie and Ontario Railroad which in terms of its charter was to have been completed in five years, had its charter extended in 1840 for five years more. This line was intended to circumvent the Niagara Falls. When the line was opened the cars were drawn by horses.

[3] *Statutes of 1837, Upper Canada*, chap. lxxiv. This act expired by non-user.

[4] *Ibid.*, § 5. See also similar provisions in statutes of this year, chaps. lx. and lxviii., in which loans were made to the Erie and Ontario and Toronto and Lake Huron roads.

[5] *Statutes of Upper Canada, ibid.*, chap. lxviii.

the Ontario and Lake Huron by granting £3 of government aid, up to a total of £100,000, for every £1 expended by the company in construction.[1] The government claim constituted a first lien. If the government had to meet the interest charge, then it was to be met by an additional tax on the districts through which the road passed. In case of default the road might be sold at auction and bought in for the province.[2] The London and Gore, which was also a petitioner for government aid, was permitted to increase its capital stock by £300,000, and a government loan of £200,000 was provided for on conditions similar to those imposed in the case of the Toronto and Lake Huron.[3]

With the settlement of the constitutional difficulties which had led to the rebellion,[4] and the establishment of a truly representative system of government, the way was apparently cleared for a new advance in the improvement of the transportation system. The population of Lower Canada by 1841 had increased to 630,000, while that of Upper Canada was 470,000.[5] The population of Upper Canada was almost wholly agricultural, not more than one-tenth of the people being found in cities and towns.[6] In Lower Canada, Quebec was the center of a considerable shipbuilding trade; in 1841 no less than sixty-four sea-going vessels, of 23,122 tons burden were built there.[7]

[1] *Statutes of Upper Canada, ibid.*, chap. lx. As a condition precedent the company was required to expend £12,500.

[2] *Ibid., loc. cit.* See also *Eighty Years of Progress of British North America*, p. 198 and footnote.

[3] 7 Wm. IV. chap. lxxi. The loan was made by the issue of 6 per cent. debentures maturing in twenty years. Other companies incorporated to construct harbors, canals, improve navigation, build macadamized roads, etc., were also aided and in the same way. To take one example from many, the Desjardins Canal was aided in a method similar to that contained in the railroad acts. 7 Wm. IV. chap. lxv.

[4] In essence the struggle had arisen because of the attempt of an aristocratic minority, the "Family Compact," to rule regardless of the canons of representative government. The difficulty was settled by the Union Act, 3 and 4 Victoria, chap. xxxv. which united Upper and Lower Canada on the basis of a legislative union.

[5] McMullen, *History of Canada*, vol. ii. p. 165.

[6] *Ibid., loc. cit.* In Upper Canada, London had a population of 28,000, while Toronto had 14,000. In Lower Canada, Montreal had 42,000 inhabitants, while Quebec had 36,000.

[7] Dent, *Last Forty Years of Canada*, vol. i. p. 57.

Upper Canada, in strong contrast to Lower Canada, was desirous of a policy of vigorous expansion in transportation systems. One of the first measures passed by the Union Parliament had to do with the raising of a loan of £1,500,000 guaranteed by the Imperial government, for the furtherance of the public works and transportation systems already under way.[1] The policy of vigorous expansion advocated by Upper Canada was in many ways distasteful to Lower Canada because of the debt burden created.[2] The interest of the upper province in the creation of an efficient system of railroad transportation was further accentuated by the appreciation of the strategic position occupied by it between the western and eastern states and the consequent belief that a railroad through the western peninsula of the province would be able to tap the carrying trade of the western states and thus add to the scanty profits consequent upon the leanness of the Canadian carrying trade.[3]

The poor credit of Canada consequent upon the disturbed conditions of the time rendered it impossible for the projected railroad enterprises to make much progress, and so we find that during the period 1841-1845 there is an almost absolute cessation of railroad legislation. In an act of 1845, which chartered the Atlantic and St. Lawrence,[4] a road intended to connect with Portland, Maine, the constant desire manifested at the time, by Montreal for an American trade connection, is again evidenced. The part played in the advocacy of this road by a citizen of Maine is of interest. In 1844, Mr. John A. Poor, whose name is so thoroughly identified with the railroad development of Maine, became fully convinced of the benefit of a

[1] 5 and 6 Victoria, chap. cxvii. The willingness of the Imperial government to extend such a guarantee had been stated by Lord Sydenham, the governor general in the speech from the throne at the first session of parliament after the union. —McMullen, *op. cit.* vol. ii. p. 174.

[2] A résumé of the differences of opinion existing on this subject between the provinces will be found in Christie's *History of Lower Canada*, vol. ii. chap. xxiii.

[3] Upper Canada *Journals of the House* 1837, *report of the select committee on the bill to aid the London and Gore Railroad*, p. 150.

[4] *Statutes of Canada* 1845, chap. ii.

direct connection between Portland and Montreal[1] and devoted himself most assiduously both with tongue and pen to an active propaganda.[2] At the same time, the merchants of Boston were endeavoring to obtain a direct connection with Montreal[3] and Poor bestirred himself to offset their influence by showing that Portland was only 246 miles from Montreal while Boston was 351; and that Portland had especial advantages as a winter port.[4] For a time it seemed as if the connection with Boston would be preferred At the same time, on account of the commercial advantage possessed by Montreal, under the existing English trade policy, as the entrepôt of Canada the merchants had not taken a very active part on behalf of either project; with the passing of the policy of protection, the differential advantage of Montreal was gone, and, spurred on by necessity, the merchants of Montreal appreciated the commercial advantages of the Portland line.[5]

Some interesting features of legislative policy appear in the charter of this enterprise. The policy of fixing maxima is continued.[6] The somewhat complicated provision contained in the charter of the Champlain and St. Lawrence for regulating the rates by means of the dividend, is replaced by a system whereby, although the regulative character of the dividend is retained, there is at the same time somewhat of a simplification. On all net income in excess of 12 per cent., a tax of one-half was to be

[1] As early as 1836, the legislature of Maine had concerned itself with this project, a railroad between Belfast, Maine, and Quebec had been surveyed. In 1839, a railroad from Portland to Lake Champlain had been surveyed. These plans had amounted to nothing. See the First International Railway, *Life and Letters* of John A. Poor, pp. 26–27.

[2] Poor, *Life and Letters*, etc., p. 31. See also letters to the Portland *Advertiser*, September 18, 1844.

[3] *Ibid.* pp. 32–33.

[4] Letter to the Sherbrooke *Gazette*, September 5, 1844.

[5] A fuller discussion of the somewhat involved propositions and negotiations connected with the project will be found in Poor, pp. 31–56.

[6] These are £5 per ton for merchandise, 30 shillings for passengers. These are for the whole distance from Montreal to the International boundary; for shorter distances the charges are to be pro rata.

paid over to the government.[1] The influence of a somewhat similar provision in the charter of the Baltimore and Washington Railroad is apparent.[2] But, while in the case of the latter the company was required to pay to the state all income in excess of 10 per cent., and in addition revise the rates so that they should not in future produce more than a 10 per cent. dividend, in the case of the former the provision is simply for the payment of a tax of one half on the net excess over 12 per cent. Coupled with this was the provision that the company was allowed to charge the maxima when the dividend was not in excess of the maximum; but the act does not contain any clause empowering the legislature to demand such revision. The fact that the excess tax was to be paid on the *net* excess income afforded an excellent opportunity for evasion on the part of the company, in case there had been any danger of having to bear the burden of a government tax on excess income. The legislator seemed to be becoming aware of the difficulties of the rate question; at the same time he wanted to invent some mechanism that would relieve him of the necessity of almost constant supervision.

The difficulties in Upper Canada still continued and some of the railroad companies chartered at an earlier date were content to undertake the less ambitious project of the construction of highways and plank walks.[3] Although the government had signified its readiness to extend aid to various railroad enterprises on condition of their expending a proportionate sum on construction, the railroads had found it impossible to raise the necessary money. In reviving the charter of the London and Gore Railroad,[4] an attempt was made to attract the confidence of English investors. It was found that of the 60,000 shares of £25 each authorized, only 5000 had been subscribed for in

[1] § 40.

[2] *Supra* p. 33.

[3] *E.g.*, In 1845 the Toronto and Lake Huron in having its charter revised was empowered to construct a plank walk. In 1846 a similar provision was placed in the act reviving the charter of the Cobourg railroad.

[4] *Statutes of Canada* 1845, chap. lxxxvi. The former acts, including that granting a loan, were repealed by this act. The name was now changed to "Great Western."

Canada; the remainder were held in England. Accordingly a most rigid system was devised, whereby the interests of the English investors were to be secured.[1] A corresponding committee of eleven, chosen by the English shareholders, was to be appointed in London to exercise a general controlling power over all matters of general policy. Such an exact enumeration was made that the management in Canada was bound hand and foot.[2] For example the directors in Canada had no control over appointments to positions where the salary involved was £150 or upwards, and all control on the matter of rates was taken out of their hands. The difficulties that have confronted the English directors of the Grand Trunk in their attempt to manage their system thus confronted the Great Western, at the outset of its career. It was soon seen that such a rigid system of management, where the directing body was separated from the railroad by over 3000 miles, could not but act prejudicially and so it was given up in 1849.

With the year 1846 a period of activity in railroad projection set in, and in a short time eleven railroads were chartered.[3]

An attempt was made at this period to systematize the railroad legislation which had been in great degree "occasional" in its nature. In 1846, a special committee of eleven members of the legislature was appointed to consider what general provisions ought to be introduced into such railway bills as might come before parliament.[4] In the same year, recommendations bearing on the general question of railroad legislation were sent out

[1] See *Statutes of Canada* 1844, chap. lxxxi.

[2] § 9 of the act enumerates in great detail the things which it was not lawful for the directors in Canada to do without the consent of the corresponding committee.

[3] In 1846, the following roads were chartered: Montreal and Lachine (*Statutes of Canada*, 1846, chap. lxxxii.); Montreal and Kingston (*ibid.*, chap. cvii.); Wolfe Island, Kingston and Toronto (*ibid.*, chap. cviii.); Peterborough and Port Hope (*ibid.*, chap. cix.). In 1847, the St. Lawrence and Industry Village (1847, chap. lxiv.); Woodstock and Lake Erie (*ibid.*, chap. cxvii.); Bytown and Britannia (*ibid.*, chap. cxviii.); Lake St. Louis and Province Line (*ibid.*, chap. cxx.); Montreal and Province Line Junction Railway (*ibid.*, chap. cxxi.); Canada, New Brunswick and Nova Scotia (*ibid.*, chap. cxxii.); Toronto and Goderich (*ibid.*, chap. cxxiii.).

[4] *Sessional papers of Canada*, 1846, p. 35.

by the colonial office of Great Britain.[1] It was recommended that the general power of the legislature to amend any provisions of a railroad charter, without being subject to a claim for recompense, should be asserted ; that one-tenth of the proposed capital should actually have been invested in good and available securities for the prosecution of the work;[2] every railway bill ought to contain provisions for the conveyance of the royal mails; every railway bill should contain provisions for prompt transfer of troops; that whenever the rate of profits of a railway exceeded 15 per cent. a revision of the rates should take place;[3] a general recommendation was made that a provision for purchase by the state should be contained in every colonial railroad enactment.[4]

The divergent policy on the matter of rates now began to be assimilated, with the result that the Upper Canada practice had, on the whole, the predominance.[5] The policy was, however, modified by providing that the discretionary regulation of tolls by the directors should be exercised subject to the approbation of these tolls by the governor in council.[6] An attempt was made to obviate the already recognized inequitable pressure of preferential rates; it was provided that "tolls were to be

[1] By Hon. W. E. Gladstone, then Secretary of State, for the colonies. For text of document see *Sessional papers of Canada*, 1846, p. 157.

[2] During the discussion on the Imperial Railway Bill of 1844, Gladstone had proposed that instead of 10 per cent., 5 per cent. should be required.—COHN, *Untersuchungen*, etc., vol. i. p. 147.

[3] This is the policy laid down in the *Imperial Statute*, 7 and 8 *Victoria*, chap. lxxxv. There is this difference, however, that the figure 10 per cent. is replaced by 15 per cent. in Gladstone's suggestion.

[4] The Imperial act already referred to provides that, at any time, after expiration of said term of 21 years, the treasury may upon giving three months' notice, and on payment of a sum equal to 25 years purchase on the divisible profits estimated on the average of the three next preceding years, purchase the railway, provided such average do not fall below 10 per cent. Gladstone recommended that in colonial acts three years should be replaced by seven, and 10 per cent. by 15 per cent.

[5] *E. g.*, *charter of* Montreal and Lachine Railroad (*Statutes of Canada*, 1846, chap. lxxxii.); Montreal and Kingston (*ibid.*, chap. cvii.); St. Lawrence and Industry (1847, chap. lxiv.).

[6] *E. g.*, *charter of Canada*, New Brunswick and Nova Scotia Railroad (*Statutes of Canada*, 1847, chap. cxxii.).

charged equally to all persons under the same circumstances."[1] The provision as to the tax on excess dividends is modified in some degree; in some cases the excess over 10 per cent.[2] is to be taxed. The Imperial Government made strong objection to the legislation on this subject, on the ground that if 10 per cent. or 12 per cent. was considered a reasonable rate of dividend it should be so stated, and that a power to reduce rates when this figure was exceeded should be exercised by government. The dependence on the automatic regulative power of the dividend was considered futile. It was recommended that if the object of imposing the excess tax was revenue, then that end would best be subserved by the imposition of a passenger tax.[3] The legislature, however, did not see fit to amend its policy in the direction recommended at this time.

The recommendations made by Gladstone, exercised some influence on the subsequent legislation. The recommendation he had made, however, that one-tenth of the capital should be paid up before operations were commenced was strongly objected to. The Imperial government altered its position, and said that it would not veto a bill if it did not contain the provision that had been recommended; accordingly, some diversity is found. In some cases a 5 per cent. payment was required;[4] in later acts,

[1] *Statutes of Canada*, 1846, chap. lxxix, "An act to amend the act incorporating the Saint Lawrence and Atlantic Railroad." See also, *charters of Montreal and Lachine* (*ibid.*, chap. lxxxii.); *St. Lawrence and Industry* (1847, chap. lxiv.); Bytown and Britannia (*ibid.*, chap. cxviii). The practice, however, is not wholly uniform. The provision is based on that contained in the Imperial act of 1845, 7 and 8 *Victoria*, chap. xx. § 90. In commenting on the charters of the Great Western, and the Montreal and Lachine Railroads, Earl Grey stated that maxima should have been contained in the acts. He thought, however, that the provision that rates should be charged equally to all persons would override this objection. (*Sessional papers of Canada*, 1847, *Appendix W.*) It is further to be noticed that another provision inserted in the acts of incorporation, with a view to safeguarding the public interest, was that which required the posting up of rates in a public place. See *Statutes of 1847* (*Canada*) chap. cxviii.

[2] *E. g. Statutes of Canada*, 1847, chap. lxiv.

[3] *Sessional Papers of Canada*, 1847, *Appendix W.* despatch of Earl Grey to Lord Elgin.

[4] See *charters of Wolfe Island, Kingston and Toronto Railroad* (*Statutes of 1846*, chap. cviii.), and *Peterborough and Port Hope Railway* (*ibid.*, chap. cix.).

however, a 10 per cent. payment is almost uniformly required as a condition precedent to the beginning of operations.[1] Somewhat analogous to this provision is the provision with reference to borrowing. The earlier acts had evidenced the opinion that the capital stock would be sufficient to construct the roads without recourse to borrowing; provision was made from time to time, however, for increase of stock under defined conditions.[2] Provisions for borrowing now appear, but no defined policy is manifested based on a power to issue bonds on a mileage basis. The assumed needs of the road guided the legislators in permitting the borrowing of a lump sum;[3] occasionally this is varied by a provision that the railroad may borrow a defined sum from time to time according to the discretion of the directors, no limit being indicated.[4]

The recommendations of the Imperial Government on the subject of "state purchase" led to a modification of the "purchase" clause. In this, however, as in other matters, the legislature manifested a sturdy independence of external dictation, and consequently we find that the modification is not a slavish following of English precedent. Accordingly we find a provision, which, in general form, states that the railroad may be assumed by the government on three months' notice, by paying the sum expended by the railroad, plus interest on the paid-up

[1] *E. g., charters of St. Lawrence and Industry* (1847, chap. lxiv.); *Lake St. Louis and Province Line* (*ibid.*, chap. cxx.); *Montreal and Province Line* (*ibid.*, chap. cxxi.); *Canada, New Brunswick and Nova Scotia Railway* (*ibid.*, chap. cxxii.). A modification of this practice is found in the charter granted in 1847, to the Toronto and Goderich Railway. It was required that one-fifth of the authorized capital should be subscribed and one-tenth of this portion paid in before the work could be commenced.—*Statutes of 1847*, chap. cxxiii.

[2] See earlier railroad charters already cited.

[3] *E. g.*, in the charter of the Montreal and Lachine road, *supra*, the directors were authorized to borrow £50,000 on its 6 per cent. bonds; the Montreal and Kingston Railroad was empowered to raise £750,000 on the security of the road.

[4] The St. Lawrence and Industry was allowed to borrow not more than £8,000 at one time; the Bytown and Britannia £100,000; the Montreal and Province Line £75,000. In as far as any conscious policy is manifest, it would appear that it was not intended that the bonded indebtedness should exceed the paid-up capital. But there is a lack of clear-cut statement.

capital from the time of the paying up of the same until the opening of the road.[1] The general provision recommended by Gladstone to the effect that railroads by their special charters were not exempt from the operation of any general railroad law which might be passed subsequently, was inserted in the charters granted in 1847 and subsequently.[2]

The period we have now reached bears the marks of transition. The policy of the government towards railroads has been given in detailed form partly because some features of the present attitude of the government towards railroad enterprise were formed at this time, partly because this period is that during which an individualistic attitude toward railroad development was most manifest.

The years 1842 to 1849 were years of trial and stress for the Canadas. Under the policy of protection hitherto in vogue in England, the Canadas had occupied a preferential position in the English market,[3] and had at the same time enjoyed

[1] *E. g., Charters of St. Lawrence and Industry*, and *Bytown and Britannia Railroads.* In the charter of the Montreal and Province Line a provision more favorable to the railroads appears. The government, after giving the requisite notice, might assume, by paying the paid-up and expended capital stock plus a 20 per cent. increase thereon, plus any further sums advanced by the shareholders and expended in the construction of the road.

[2] *E. g., Statutes of Canada*, 1847, chaps. lxiv., cxviii., cxix., cxx., cxxii. In one instance a limitation of this principle is seen. The Bytown and Britannia charter guarantees that if the railroad complies with the provisions of the act, then for four years after the passing of the act no other railway, between these points, is to be built within three miles of this railroad. The influence of Massachusetts legislation appears here.

In 1844 the English House of Commons had resolved that the following clause, in which the Canadian provision as to the regulative power of a general railway law was based, should be inserted in all railway bills. . . . "that nothing herein contained. . . . shall exempt the railway. . . . from the provisions. . . . of any general act relating to railways which may pass during the present or any future session of Parliament."—JEANS, *Railway Problems*, p. 532.

[3] So great was this advantage that cargoes of timber were shipped from northern Europe to the British North American colonies and thence collusively reshipped to England as Canadian timber in order to obtain the advantage of the duty preference. MALET, *The Canadas*, etc., p.12. *Imperial Statute*, 1 and 2 George, IV. 1821, chap. xxxvii., contains the data bearing on the preferential duties. For example, the general duty on timber imported in foreign ships was £1 9s 5d per load (50 cubic feet), when

the exclusive privilege of supplying lumber and provisions to the West Indies.[1] The changed policy of England seriously affected the Canadian grain trade. In 1842 the number of seagoing vessels ascending the St. Lawrence fell off by 377;[2] while in the period 1841–1843 the volume of imports and exports at the port of Quebec fell off by £500,000.[3] An attempt was made to lessen the strain by the passage in 1843 of an Imperial act, the Canada corn bill, which admitted Canadian wheat and flour to the English market on a preferential footing.[4] This really tended to aggravate conditions; wheat was imported from the United States and re-exported as Canadian wheat;[5] under these circumstances a large amount of capital was invested in transportation and in milling.[6] The bonding privilege was not in existence at the time and so all the western trade was forced down by way of Montreal. Witn the abolition of the preferential duties in favor of Canadian grain, a great deal of fixed capital became useless. In 1849 the disadvantage of the shipping ports was further accentuated by the coming into existence of the bonding privilege whereby goods from western Canada could be sent through the United States in bond and shipped at American ports.[7] Dis-

imported in British ships £1 8s.; and when imported from the British North America colonies 5s. In the case of specified forms of timber the preferential advantage of the colonies was much greater.

[1] DENT, *Last Forty Years of Canada*, vol. i. p. 56.

[2] MCMULLEN, *History of Canada*, vol. ii. p. 183.

[3] Statement issued by Customs Department of Inspector General's office at Quebec, October 22, 1859.

[4] Chap. xxix. of the statutes of that year. See also *London Economist*, December 13, 1845.

[5] This was the avowed policy of the Canada corn bill, it being hoped thereby to divert to the Canadian water ways the surplus growth of the western states. See *London Economist*, December 13, 1845.

[6] MCMULLEN, *History of Canada*, vol. ii. pp. 198-199. GALT, *Canada*, 1849 to 1859, p. 25.

[7] Letter of HON. JOHN YOUNG to the *Commissioner of Public Works*, 1855, p. 3. This letter will be found in the *Canadian Pamphlet Collection* in the Parliamentary library at Ottawa. See also POPE, *Life of Macdonald*, vol. i. p. 105; and a letter to the chairman of the North American Colonial Association, etc. GALT, p. 4. This will also be found in the pamphlet collection referred to.

content was keen;[1] this culminated in the issue in 1849 of the famous "annexation manifesto."[2] The unfavorable condition of the country's credit, the stagnation of business, the destruction of fixed capital, the absence of industry, were all attributed to the abolition of the protective policy of England; and the only remedy seen was annexation to the United States.

The gloom of this pronouncement was apparently justified by the actual conditions. The question of repudiation of the debt had been considered in 1848:[3] while the railway system was being rapidly extended in the United States,[4] construction work on five lines was slowly being carried on in Canada.[5] These lines possessed a total mileage in operation of only 54 miles.[6]

It was at this time that Francis Hincks who held the position of Inspector General in the government became convinced of the advantage of rapid extension of the railroad system. Notwithstanding the financial disquietude consequent upon the panic of 1847 he determined to develop a railroad system through the active intervention of the government, and bent all his energies to this task. The success which attended his efforts,

[1] In 1846, resolutions condemnatory of the free trade policy were passed at Quebec and Montreal, and in the same year, the legislative council passed a resolution of a similar tenor. See McMullen, *History of Canada*, vol. ii. pp. 198-199, and the *Annual Register*, 1846, p. 377.

[2] This had 325 signatures. See *Annual Register*, 1846, pp. 391 *et seq.*

[3] See *Memorandum* addressed by Mr. H. B. Willson of Hamilton to Sir John Pakington, *Sessional Papers*, Canada, 1852, p. 33, Appendix Z. To meet the excess expenditure consequent upon heavy payments for public work it was found necessary in 1848 to issue one million dollars of "exchequer bills" having one year to run and bearing 6 per cent. interest. *Statutes of Canada*, 1848, chap. v. These bills fell considerably below par.

[4] In 1850 there were about 6000 miles of railway in operation in the United States, and about 9000 miles projected.—Lardner, *Railway Economy in Europe and America*, p. 327.

[5] The lines were the Laprairie, St. Lawrence and Atlantic, Lachine, St. Lawrence and Industry, and the Erie and Ontario.—*Eighty Years Progress of British North America*, p. 19.

[6] See table contained in part vi. p. 3 of the *Annual Report of the Department of Railways and Canals*, Canada, for the years 1895-6.

the great expansion of the Canadian railroad system, the development of the country consequent upon such expansion, the means adopted to further this end, fall within the purview of a later period. With the year 1849 the probation period, the period of beginnings and experiments in railroad policy with which this paper is concerned, comes to an end.

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